

REMARKS/ARGUMENTS

Claims 1 – 43 were presented for consideration in the present application. This Amendment cancels claims 1 – 10 and adds new claims 44 – 45. Thus, claims 11 – 45 are presented for consideration upon entry of this Amendment. Applicants respectfully submit that no new subject matter is introduced by claims 44 – 45. For at least the reasons set forth below, Applicants respectfully submit that claims 11 – 45 are patentable over the cited art.

Applicants respectfully submit that the Examiner never acknowledged the Information Disclosure Statement (hereinafter “IDS”) that accompanied an RCE dated August 31, 2006. Applicants respectfully request that the Examiner acknowledges and initials the references submitted in the IDS dated August 31, 2006 along with the references cited in the IDS submitted with this Amendment in the next correspondence.

Applicants gratefully appreciate the courtesies extended by the Examiner during the telephone interview conducted on January 4, 2008. During the interview, related U.S. Application Serial No. 10/619,677 was brought to the Examiner’s attention and the pending Office Action for that application has been cited in the IDS submitted herewith.

Claims 1 – 10 stand rejected under 35 U.S.C. §102(e) as being anticipated by United States Patent Application No. 6,264,626 to Linares et al. (hereinafter “Linares”). In view of the cancellation of claims 1 – 10, the rejection to claims 1 – 10 is now moot. Reconsideration and withdrawal of the rejection to claims 1 – 10 are respectfully requested.

Claims 11 – 43 stand rejected under 35 U.S.C. §102(e) as being anticipated by Linares. For at least the reasons set forth below, Applicants submit that claims 11 – 43 are not disclosed or suggested by Linares.

Independent claim 11 provides a tampon applicator assembly that includes a barrel having an insertion tip area with an insertion tip, a tapered main section adjacent

the insertion tip area and a finger grip adjacent the tapered main section and opposite the insertion tip area. The insertion tip area has a taper that decreases from the tapered main section to the insertion tip.

On page 6, paragraph 29 of the present application, it is provided, "insertion tip 20 and main section 22 intersect at a first plane 36, while the main section and finger grip 24 intersect at a second plane 38." Thus, the main section is from first plane 36 to second plane 38, as shown clearly in Fig. 4. The specification also provides that the "taper of main section 22 is defined as a ratio of dimension 50 at second plane 38 divided by dimension at first plane 36." See page 8, paragraph 36.

In fact, the specification even distinguishes the tapered outer dimension of the main section of the barrel (see page 8, paragraph 35) from the tapered outer dimension of the insertion tip (see page 7, paragraph 31). Clearly, the insertion tip 20, and its taper, is from its free end to first plane 36.

In contrast to the tapered main section of claim 11, Linares discloses a tampon applicator that includes a barrel having a uniform outer dimension across the entire length of the main section of the barrel. Fig. 1 in Linares illustrates straight contour lines across the entire length of the main section of the barrel that further supports the disclosure of a uniform outer dimension. Also, the specification in Linares fails to teach or suggest that the barrel has a taper on any portion of the barrel whatsoever. See col. 5, lines 54 – 60.

The only feature of Linares that has any resemblance of a taper, as provided in claim 11, is the insertion tip, and this is the crux of the weakness of the Office Action rejection.

The Office Action has failed to interpret the claimed "main section" and "insertion tip" in a manner consistent with the definition of these elements provided in the specification.

Thus, the present application and new claim 11 clearly defines the main section of the barrel 22 as being separate from the insertion tip 20. Therefore, any reliance by the Office Action on the tapered insertion tip in Linares to satisfy the tapered main section recited in claim 11 is flawed.

When one looks to the tampon applicator provided in Linares, as depicted in any of Figs. 1, 2A, 2B or 2D, the main section of the barrel is clearly uniform and lacks any taper. Therefore, Linares fails to disclose or suggest the tapered main section of claim 11.

Further, the Office Action provides no support for the conclusion that the main section of the applicator of Linares may be defined to include the tapered portion adjacent the tip. Applicants respectfully submit that the definitions of the main section of the barrel and the insertion tip clearly convey that they are distinct components. These components are well-known and well-defined in the art, and are basic vocabulary for a person having ordinary skill in the art. As such, any rationale offered for this conclusion would contradict the way a person having ordinary skill in the art would define a main section of a barrel and an insertion tip.

In addition, independent claim 11 provides that the tapered main section has a maximum outer dimension located closer to the finger grip than to the insertion tip. The present application teaches that the outer dimension is tapered "from a maximum outer dimension at second plane 38 to a minimum outer dimension 42 at first plane 36." See page 8, paragraph 35.

Applicants respectfully submit that the Office Action has continuously failed to show where Linares shows the feature of claim 11 that the "tapered main section ha[s] a maximum outer dimension" located closer to the finger grip than to the insertion tip.

The Office Action suggests that the barrel provided in Linares is at its maximum dimension about 55% to 85% of the length from the insertion tip 41, as shown in Fig. 1.

However, Fig. 1 in Linares shows no indication that the maximum outer dimension of the main section of the barrel is any different at 10% of the length from the insertion tip 41 then it is at 99% of the length from the insertion tip 41. In fact, the straight contour lines illustrated across the entire length of the main section of the barrel in Fig. 1 fail to show the slightest resemblance of a maximum outer dimension that is "closer to said finger grip than to said insertion tip" as recited by claim 11.

Accordingly, Applicants respectfully submit that Linares fails to disclose or suggest independent claim 11. As such, claim 11, as well as claims 12 through 20 that depend therefrom, are in condition for allowance. Reconsideration and withdrawal of the rejection to claims 11 through 20 are respectfully requested.

In addition, claim 14, which is dependent from independent claim 11, is also believed to be in condition for allowance over Linares for the following additional reason.

Claim 14 provides that the tapered main section has a main section taper ratio of about 1.07 to about 1.15.

Applicants respectfully submit that Linares fails to disclose or suggest a main section taper ratio of about 1.07 to about 1.15, as provided in claim 14. When one looks to the main section (as main section is clearly defined in the present application) of Linares, as depicted in any of Figs. 1, 2A, 2B or 2D, the main section of the barrel is clearly uniform and lacks any taper.

Thus, Linares clearly does not disclose or suggest a main section taper ratio of about 1.07 to about 1.15. Reconsideration and withdrawal of the rejection to claim 14 are respectfully requested for this reason as well.

In addition, claim 17, which is dependent from independent claim 11, is also believed to be in condition for allowance over Linares for the following additional reason.

Claim 17 provides that the insertion tip has a taper ratio of between about 0.66 and about 1.6. Thus, claim 17 provides both a tapered main section and a tapered insertion tip.

As discussed in detail above with respect to claim 11, the present application clearly defines the beginning and ending of the main section and the insertion tip. Applying the definitions of these components to the disclosure in Linares clearly shows that Linares does not have both a tapered main section and a tapered insertion tip. Linares, as implicitly acknowledged in the Office Action, only shows one tapered portion and that is the tapered insertion tip. Linares' barrel main section has a constant outer diameter, i.e. no taper.

Thus, Linares clearly does not disclose or suggest the tapered main section and tapered insertion tip of claim 17 or claim 18 dependent therefrom. Reconsideration and withdrawal of the rejection to claims 17 and 18 are respectfully requested for this reason as well.

Independent claim 21 provides a tampon applicator assembly that includes a main section taper ratio of about 1.07 to about 1.15.

Applicants respectfully submit that Linares fails to disclose or suggest a main section taper ratio of about 1.07 to about 1.15, as provided in claim 21. As discussed above, when one looks to the main section (as main section is clearly defined in the present application) of Linares, as depicted in any of Figs. 1, 2A, 2B or 2D, the main section of the barrel is clearly uniform and lacks any taper.

Further, the Office Action provides no support for the conclusion that the main section of the barrel in Linares has a taper at the insertion end of between 1.07 and 1.15, as shown in Fig. 1. The conclusion is clearly misplaced. Applicants respectfully submit that the drawings of Linares do not disclose the relative dimensions of the applicator shown.

The proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale. See MPEP §2125. Also, "[a]bsent any written description in the specification of quantitative values, arguments based on measurement of a drawing are of little value." See In re Wright, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977). In addition, "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." See Hockerson-Halberstadt, Inc. v. Avia Group Int'l, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000).

Any reliance on the drawings of Linares to satisfy the main section taper ratio of about 1.07 to about 1.15, as recited in claim 21, is flawed. The written description in Linares fails to disclose quantitative values regarding a taper ratio. In fact, as discussed above, the specification fails to disclose a tapered main section, let alone a particular taper size or taper ratio. Also, the Linares drawing fails to disclose the claimed main section taper ratio.

Accordingly, Applicants respectfully submit that Linares fails to disclose or suggest independent claim 21. As such, claim 21, as well as claims 22 through 30 that depend therefrom, are in condition for allowance. Reconsideration and withdrawal of the rejection to claims 21 through 30 are respectfully requested.

In addition, claim 29, which is dependent from independent claim 21, is also believed to be in condition for allowance over Linares for the following additional reason.

Claim 29 provides that the insertion tip has a taper ratio of between about 0.66 and about 1.6. Thus claim 29 provides both a tapered main section and a tapered insertion tip.

As discussed in detail above with respect to claim 11, the present application clearly defines the beginning and ending planes of the main section and the insertion

tip. Applying the definitions of these components to the disclosure in Linares, Linares merely discloses a tapered insertion tip, and a barrel main section with a constant outer diameter.

Thus, Linares clearly does not disclose or suggest the tapered main section and tapered insertion tip of claim 29 or claim 30 dependent therefrom. Reconsideration and withdrawal of the rejection to claims 29 and 30 are respectfully requested for this reason as well.

Independent claim 31 provides a tampon applicator assembly that includes an insertion tip having a plurality of petals and a taper ratio of more than about 0.66.

Applicants respectfully submit that Linares fails to disclose or suggest an insertion tip having a taper ratio of more than about 0.66. As discussed above, when one looks to the main section of Linares, as depicted in any of Figs. 1, 2A, 2B or 2D, the main section of the barrel is clearly uniform and lacks any taper.

Further, the Office Action fails to indicate where Linares discloses an insertion tip having a taper ratio of more than about 0.66. Applicants respectfully submit that neither the drawings nor the specification of Linares disclose the relative dimensions of the applicator shown.

As discussed above with respect to claim 21, any reliance on the drawings of Linares to satisfy the insertion tip having a taper ratio of more than about 0.66 is flawed. The written description in Linares fails to disclose quantitative values regarding a particular taper size or taper ratio. Further, a measurement of the Linares figures clearly fail to show the claimed taper ratio.

Accordingly, Applicants respectfully submit that Linares fails to disclose or suggest independent claim 31. As such, claim 31, as well as claims 32 through 36 that depend therefrom, are in condition for allowance. Reconsideration and withdrawal of the rejection to claims 31 through 36 are respectfully requested.

In addition, claim 33, which is dependent from independent claim 31, is also believed to be in condition for allowance over Linares for the following additional reason.

Claim 33 further provides a main section having a main section taper ratio of about 1.08 to about 1.13. Thus claim 33 provides both a tapered main section and a tapered insertion tip.

As discussed in detail above with respect to claims 11 and 21, the present application clearly defines the beginning and ending planes of the main section and the insertion tip. Applying the definitions of these components to the disclosure in Linares, Linares merely discloses a tapered insertion tip, and a barrel main section with a constant outer diameter.

Thus, Linares clearly does not disclose or suggest the tapered main section and tapered insertion tip of claim 33. Reconsideration and withdrawal of the rejection to claim 33 are respectfully requested.

Claim 37 provides a tampon applicator assembly that includes a plurality of petals having a petal length-to-width ratio over about 2 to about 3.

Applicants respectfully submit that Linares fails to disclose or suggest a plurality of petals having a petal length-to-width ratio over about 2 to about 3. As discussed above, when one looks to the insertion tip of Linares, as depicted in any of Figs. 1, 2A, 2B or 2D, the figures fail to show any quantitative values for the petal length-to-width ratio.

Further, the Office Action fails to indicate where Linares discloses a plurality of petals having a petal length-to-width ratio over about 2 to about 3. Applicants respectfully submit that neither the drawings nor the specification of Linares disclose the relative dimensions of the applicator shown.

As discussed above with respect to claims 17, 21 and 31, any reliance on the drawings of Linares to satisfy a plurality of petals having a petal length-to-width ratio over about 2 to about 3 is flawed. Again, written description in Linares fails to disclose quantitative values regarding a particular petal length-to-width ratio. Further, Linares is clearly not shown in the same complete detail as is contained in the present application.

Accordingly, Applicants respectfully submit that Linares fails to disclose or suggest independent claim 37. As such, claim 37, as well as claims 38 through 43 that depend therefrom, are in condition for allowance. Reconsideration and withdrawal of the rejection to claims 37 through 43 are respectfully requested.

Claims 44 – 45 have been added to point out various aspects of the present application. It is submitted that new claims 44 – 45 are directed to the elected embodiment. Support for new claims 44 – 45 can be found in the specification at least at page 8, paragraph 35. It is believed that new claims 24 – 29 are in condition for allowance.

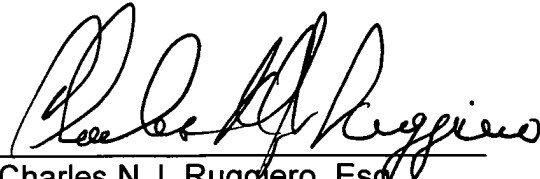
In view of the above, it is respectfully submitted that the present application is in condition for allowance. Such action is solicited.

Applicants respectfully submit that related U.S. Application Serial No. 10/619,677 is currently pending and the pending Office Action for the aforementioned application has been cited in the IDS submitted herewith. Further, Applicants respectfully submit that claims 22 – 24, 26 and 27 have been allowed in the aforementioned application.

If for any reason the Examiner feels that consultation with Applicants' attorney would be helpful in the advancement of the prosecution, the Examiner is invited to call the telephone number below.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero", written over a horizontal line.

Charles N.J. Ruggiero, Esq.
Registration No. 28,468
Attorney for Applicants
Ohlandt, Greeley, Ruggiero & Perle, L.L.P.
One Landmark Square
Stamford, CT 06901-2682
Tel: (203) 327-4500
Fax: (203) 327-6401